

DEPARTMENT OF THE ARMY

LEASE

OF PROPERTY ON Navajo Depot Activity  
Flagstaff, Arizona

MILITARY RESERVATION

No. DACA09-1-83-151

*THIS LEASE, made between the Secretary of the Army, of the first part and the STATE OF ARIZONA, by and through its Department of Transportation, Highways Division, of the second part, WITNESSETH:*

*That the Secretary of the Army, by virtue of the authority contained in Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the party of the second part, hereinafter designated as the lessee, for a term of five (5) years, beginning 26 April, 1977, and ending 25 April, 1982, but revocable at will by the Secretary of the Army, the following described property for (renewal for one additional 5-year period as herein after provided) but revocable at will by the Secretary of the Army, the following described property for water storage purposes:*

Facility No. 628 and a 40' x 40' parcel of land circumjacent thereto, Navajo Depot Activity, located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, T-22-N, R-5-E, G&SRM, Coconino County, Arizona, as shown in red on the reproduced portion of the Garland Prairie Quadrangle map marked Exhibit "B", attached hereto and made a part hereof.

Containing 0.04 acre, more or less.

Together with the right of ingress and egress thereto over such routes as designated by the officer having immediate jurisdiction over the property.

THIS LEASE is granted subject to the following conditions:

1. That the lessee shall pay to the United States rental in the amount of ONE DOLLAR AND NO/100 CENTS (\$1.00) ~~per annum~~ for the term, payable in advance, and the lessee shall also pay to the United States on demand any sum which may have to be expended after the expiration, revocation, or termination of this lease in restoring the premises to the condition required by Condition No. 20 hereof. Compensation shall be made payable to the Treasurer of the United States and forwarded by the lessee direct to the address shown in Condition No. 23 hereof.

2. That, as of the commencement date of this lease, an inventory and condition report of all personal property and improvements of the Government included in this lease shall be made by a representative of the Government and a representative of the lessee to reflect the then present condition of said property. A copy of said inventory and condition report shall be attached hereto and become a part hereof, as fully as if originally incorporated herein. At the expiration, revocation, or termination of this lease a similar inventory and condition report shall be prepared and submitted to the District Engineer, U.S. Army Engineer District, Los Angeles, CA 90053 hereinafter designated as "said officer," said inventory and condition report to constitute the basis for settlement by the lessee with said officer for leased property shown to be lost, damaged, or destroyed, any such property to be either replaced or restored to the condition required by Condition No. 20 hereof, or at the election of the Government reimbursement made therefor by the lessee at the then current market value thereof.

3. That the lessee has inspected and knows the condition of the leased property, and it is understood that the same is hereby leased without any representation or warranty by the Government whatsoever, and without obligation on the part of the Government to make any alterations, repairs, or additions thereto.

4. That, subject to the limitations of Condition No. 20 hereof with respect to the restoration of the property, all portions of the leased property shall at all times be protected and maintained in good order and condition by and at the expense of the lessee.

5. That the lessee shall neither transfer nor assign this lease or any property on the demised premises, nor sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this lease without permission in writing from the said officer.

6. That the right is hereby reserved to the United States, its officers, agents, and employees to enter upon the said premises at any time for the purpose of inspection and inventory and when otherwise deemed necessary for the protection of the interests of the Government, and the lessee shall have no claim of any character on account thereof against the United States or any officer, agent, or employee thereof.

7. That the United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the said premises, or for damages to the property of the lessee, or for injuries to the person of the lessee (if an individual), or for damages to the property or injuries to the person of the lessee's officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of any one of them, arising from governmental activities, and the lessee shall hold the United States harmless from any and all such claims.

8. That the lessee shall at all times exercise due diligence in the protection of the demised premises against damage or destruction by fire and other causes.

9. That any property of the United States damaged or destroyed by the lessee incident to the lessee's use and occupation of the said property shall be promptly repaired or replaced by the lessee to the satisfaction of the said officer, or in lieu of such repair or replacement the lessee shall, if so required by the said officer, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damages to or destruction of Government property.

10. That the lessee shall cut no timber, conduct no mining or drilling operations, remove no sand, gravel, or kindred substances from the ground, except in the exercise of mineral rights heretofore reserved to the record owner thereof, commit no waste of any kind, or in any manner substantially change the contour or condition of the property hereby leased, except changes required in carrying out soil and water conservation measures.

11. That the lessee shall comply with all applicable laws, ordinances, and regulations of the State, county, and municipality wherein the said demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters.

12. That the lessee shall not construct any permanent structure on the said demised premises, and shall not construct any temporary structure or advertising sign thereon without the prior written consent of the said officer.

13. That the lessee shall pay to the proper authority, when and as the same becomes due and payable, all taxes, assessments, and similar charges, which at any time during the term of this lease, may be taxed, assessed or imposed upon the Government or upon the lessee with respect to or upon the leased premises. In the event any taxes, assessments, or similar charges are imposed with the consent of the Congress upon property owned by the Government and included in this lease (as opposed to the leasehold interest of the lessee therein), this lease shall be renegotiated so as to accomplish an equitable reduction in the rental provided above, which shall not be greater than the difference between the amount of such taxes, assessments, or similar charges and the amount of any taxes, assessments or similar charges which were imposed upon such lessee with respect to his leasehold interest in the premises prior to the granting of such consent by the Congress; provided that in the event that the parties thereto are unable to agree within 90 days from the date of the imposition of such taxes, assessments, or similar charges, on a rental which in the opinion of the said officer, constitutes a reasonable return to the Government on the leased property, then in such event, the said officer shall have the right to determine the amount of the rental, which determination shall be binding on the lessee subject to appeal in accordance with Condition No. 14 of this lease.

14. (a) That, except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the said officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Lessee. The decision of the said officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Lessee mails or otherwise furnishes to the said officer a written appeal addressed to the Secretary of the Army. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the Lessee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Lessee shall proceed diligently with the performance of the contract and in accordance with the said officer's decision.

(b) This Condition does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, that nothing in this Condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

15. That this lease may be terminated by the lessee at any time by giving to the Secretary of the Army, through the said officer, at least ten (10) days' notice thereof in writing; provided that, in case of such termination, no refund by the United States of any rental theretofore paid shall be made, and provided further, that in the event the said notice is not given at least ten (10) days prior to the rental due date, the lessee shall be required to pay the rental for the period or term shown in Condition No. 1 hereof.

16. That the use and occupation of the premises leased hereby shall be subject to the general supervision and approval of the officer having immediate jurisdiction over the property and to such rules and regulations as may be prescribed by him from time to time.

17. That the lessee shall pay the cost, as determined by the officer having immediate jurisdiction over the property, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the lessee, including the lessee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the method prescribed by the officer having immediate jurisdiction over the property, upon bills rendered monthly.

18. That for such period as the lessee is in possession of the leased property pursuant to the provisions and conditions of this lease the lessee shall procure and maintain at its cost a standard fire and extended coverage insurance policy or policies on the leased property to the full insurable value thereof. The lessee shall procure such insurance from any responsible company or companies, and furnish either the original policy or policies or certificate of insurance or certificates of insurance to the District Engineer. The policy or policies evidencing such insurance shall provide that in the event of loss thereunder the proceeds of the policy or policies, at the election of the Government, shall be payable to the lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, any balance of the proceeds not required for the repair, restoration, or replacement of the property damaged or destroyed to be paid to the Government, and that in the event the Government does not elect by notice in writing to the insurer within 60 days after the damage or destruction occurs to have the proceeds paid to the lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the Government, provided, however, that the insurer, after payment of any proceeds to the lessee in accordance with the provisions of the policy or policies shall have no obligation or liability with respect to the use or disposition of the proceeds by the lessee. Nothing herein contained shall be construed as an obligation upon the Government to repair, restore, or replace the leased property, or any part thereof.

19. That no Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the lease be for the general benefit of such corporation or company.

20. That, on or before the date of expiration of this lease or its termination by the lessee, the lessee shall at its cost vacate the leased property, remove the property of the lessee therefrom, and restore the leased property to as good order and condition as that existing upon the date of commencement of the term of this lease, less ordinary wear and tear and damage to the leased property covered by insurance and for which the Government shall receive or has received insurance funds in lieu of having the damaged property repaired, replaced, or restored. If, however, this lease is revoked, the lessee shall vacate the leased property, remove the property of the lessee therefrom, and restore the leased property to the condition aforesaid within such time as the Secretary of the Army may designate. In either event, if the lessee shall fail or neglect to remove the property of the lessee and so restore the leased property, then, at the option of the Secretary of the Army, the property of the lessee shall either become the property of the United States without compensation therefor, or the Secretary of the Army may cause it to be removed and the leased property to be so restored at the expense of the lessee, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

20 (ALTERNATE). That, on or before the date of expiration of this lease or its termination by the lessee, the lessee shall vacate the demised premises, remove the property of the lessee therefrom, and restore the premises to as good order and condition as that existing upon the date of commencement of the term of this lease, damages beyond the control of the lessee and due to fair wear and tear excepted. If, however, this lease is revoked, the lessee shall vacate the premises, remove said property therefrom, and restore the premises to the condition aforesaid within such time as the Secretary of the Army may designate. In either event, if the lessee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Secretary of the Army, said property shall either become the property of the United States without compensation therefor, or the Secretary of the Army may cause it to be removed and the premises to be restored at the expense of the lessee, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

21. That if more than one lessee is named in this lease the obligations of said lessees herein contained shall be joint and several obligations.

22. That, except as otherwise specifically provided, any reference herein to "Division Engineer", "District Engineer" or "said officer" shall include his duly appointed successors and his authorized representatives.

23. That all notices to be given pursuant to this lease shall be addressed, if to the lessee to

District Engineer, Arizona Department of Transportation, 1801 South Milton Road, Flagstaff, Arizona 86001

; if to the Government to the

District Engineer, U.S. Army Engineer District, Los Angeles, Arizona Real Estate Office, 2721 North Central Avenue, Room 1010, Phoenix, Arizona 85004,

or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when inclosed in a properly sealed envelope, or wrapper, addressed as aforesaid and deposited postage prepaid (or, if mailed by the Government, deposited under its franking privilege) in a post office or branch post office regularly maintained by the United States Government.

24. The lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the lessee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to require the lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

25. That in the event the United States revokes this lease or in any other manner materially reduces the area covered thereby prior to the date of expiration thereof, an equitable adjustment in the rental paid or thereafter to be paid under this lease shall be made: Provided, however, that this provision shall not apply in the event of revocation because of a breach by the lessee of any of the terms and conditions of this lease.

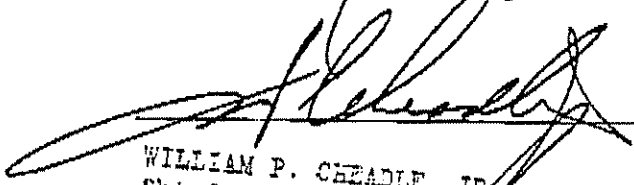
26. That prior to the execution of this lease Condition No. 20 (Alternate) was deleted, the Granting Clause was modified, and Conditions Nos. 26 through 33 were added hereto and made a part hereof. Conditions Nos. 27 through 33 are set forth on that added page titled "Added Conditions", marked Exhibit "A", attached hereto and made a part hereof.

~~That prior to execution of this lease conditions were deleted, revised and added in the following manner:~~

This lease is not subject to Title 10, United States Code, Section 2662.

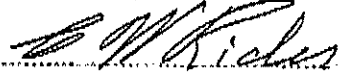
IN WITNESS WHEREOF I have hereunto set my hand by authority of the Secretary  
of the Army this 5th day of May, 1983.

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RW

  
WILLIAM P. CHEADLE, JR.  
Chief, Real Estate Division  
U.S. Army Engineer District, L.A.

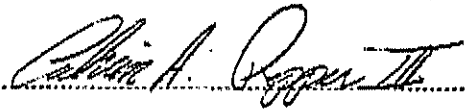
THIS LEASE is also executed by the lessee this 25th day of April, 1983.

STATE OF ARIZONA acting by and through  
its Department of Transportation

By:  (SEAL)

Title: Deputy State Engineer  
(Post Office Address)

Signed and sealed in the presence of:



My Commission Expires Sept. 2, 1985

ADDED CONDITIONS

27. That it is understood that the obligations imposed on the Lessee by Condition No. 7 are limited to those not prohibited from being assumed by the laws of the State.

28. That, in the event that the Lessee is a self-insured State, the Lessee may issue those certificates of insurance, or policies, required under Condition No. 18 hereof.

29. That all alterations and modifications to the leased property are subject to prior written approval of the officer having immediate jurisdiction over the property, or his designee. The plans and specifications for all proposed work shall be submitted to the aforesaid officer or his designee. All costs associated with alterations, modifications, repairs and maintenance of the leased property shall be the responsibility of the Lessee, at no cost to the Department of the Army.

30. That the Inventory and Condition Report, required under Condition No. 2 hereof, is set forth on that added page marked Exhibit "C", attached hereto and made a part hereof.

31. That the term of this lease shall be renewed and extended for one additional 5-year period (through 25 April 1987) at the option of the Lessee, provided the Lessee files a written request for continued use with the District Engineer, U.S. Army Engineer District, Los Angeles, no earlier than four years from the commencement date and no later than 25 April 1983, and provided further, that the lease has not been terminated in accordance with any provision thereof. The rental consideration to be paid (for the term) shall include the additional 5-year extension. All terms and conditions of said lease shall remain the same during any extension thereof.

32. That the use of the leased property shall be subject to all Federal, State, and local environmental laws and regulations. Upon termination of Lessee's use of the leased premises under this lease, or any extension(s) thereof, the Lessee shall return the leased property to the Government environmentally clean.

33. That the Lessee shall not discriminate against any person or persons because of race, color, religion, age, sex, handicap, or national origin in the conduct of operations on the leased premises.

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WILLIAMS 17 MI  
PARKS 3 MI.

510 000 FEET 111° 2' 30"

1210000



EXHIBIT B



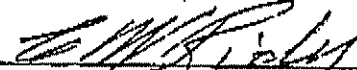
Lease No. DACA09-1-83-151  
Navajo Depot Activity, Arizona

JOINT INVENTORY AND CONDITION REPORT

This joint inventory and condition report is prepared pursuant to Condition No. 2 of the attached lease and sets forth the condition of Facility No. 628, Navajo Depot Activity, Flagstaff, Arizona, as of the effective date of said lease. Said facility is a 60,000 gallon, elevated steel water storage tank.


Facility No. 628 is in good condition.

STATE OF ARIZONA, acting by and  
through its Department of Transportation

By: 

Title: Deputy State Engineer

DEPARTMENT OF THE ARMY

By: 

RAYMOND W. FLUHRER  
Realty Specialist  
U.S. Army Engineer District,  
Los Angeles

EXHIBIT "C"

